

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1716

IN THE MATTER OF:

Served June 23, 1977

Application of OMNIBUS CORPORATION	)	Application No. 999
for Temporary Authority to Perform	)	
Charter Operations Pursuant to	)	Consolidated Docket No. 380
Five Contracts	)	

By Application No. 999, filed May 16, 1977, as amended at the below-referenced public hearing, Omnibus Corporation (Omnibus) seeks temporary authority pursuant to Title II, Article XII, Section 4(d)(3) of the Compact. Specifically, applicant seeks authority to transport passengers and their baggage in the same vehicle with passengers, over irregular routes, as follows:

Charter operations pursuant to contract:

1. To transport passengers and their baggage in the same vehicle with passengers, between the National 4-H Club Center, 7100 Connecticut Avenue, Chevy Chase, Md., on the one hand, and, on the other, points in the Metropolitan District, restricted to transportation performed pursuant to a continuing contract or contracts with the National 4-H Center (4-H).
2. To transport students between Park (sic) Heritage Apartments, Briarwood Road, Annandale, Va., and Washington School for Secretaries, 2020 K Street, N. W., Washington, D. C., restricted to transportation performed pursuant to a continuing contract or contracts with Clasco, Inc., and further restricted to the transportation of students of the Washington School for Secretaries (WSS).
3. To transport students between Quality Inn Central, 1190 Court House Road, Arlington, Va., and U. S. Customs Service Academy, 3520 Prospect Street, N. W., Washington, D. C., and U. S. Customs Service, 14th Street and Constitution Avenue, N. W., Washington, D. C., restricted to transportation performed pursuant to a continuing contract or contracts with U. S. Customs Service (Customs).
4. To transport passengers between the Guest Quarters, 100 South Reynolds Street, Alexandria, Va., and The American Film Theatre, L'Enfant Plaza, S. W., Washington, D. C., restricted to transportation performed pursuant to a continuing contract or contracts with the U. S. Comptroller of the Currency (Comptroller).

5. To transport passengers between 700 - 19th Street, N. W., Washington, D. C., and Bretton Woods Recreation Center at Seneca, Md., restricted to transportation performed pursuant to a continuing contract or contracts with Bretton Woods Recreation Center (Bretton Woods).

RESTRICTION: The transportation service described in 1 through 5 above is to be performed in school bus vehicles only.

Applicant is a Virginia corporation and holds no authority from this Commission. <sup>1/</sup> It has been performing various transportation services for several years in the Metropolitan District, including the services proposed herein. By Order No. 1686, served May 13, 1977, Omnibus was directed to cease and desist from the transportation for hire of persons between any points in the Metropolitan District, unless or until appropriate authority was in effect therefor. A motion to stay the effective date of said order was denied by Order No. 1699, served May 23, 1977.

Each of the contracting parties submitted a notarized statement in support of the application. Generally, the supporting parties state that they have been satisfied with applicant's service and desire its continuation. No specific details were provided, however, about attempts, if any, to secure service from authorized carriers. Applicant asserted that it believes there is no existing carrier which can presently provide service.

By Order No. 1698, served May 23, 1977, the Commission concluded that the evidence in the form of verified statements failed to establish conclusively that the criteria set forth in Title II, Article XII, Section 4(d)(3) of the Compact had been met. Accordingly, a public hearing was held on May 27, 1977.

Before summarizing the evidence adduced at said hearing, two procedural matters require disposition. First, counsel for applicant noted a continuing objection to certain questions propounded by the Commission's General Counsel. Assisting in the development of a record is a proper function of the General Counsel. Internal Organization and Operation Minute 3c.(1) sets forth the duties of the legal department of the staff including the handling of all proceedings before the Commission and the performance of such other legal functions as the Commission may direct. The Commission has thereby authorized the General Counsel and the legal department to participate in Commission hearings to present evidence, cross-examine witnesses, and otherwise assist in the development of a complete and adequate record within the parameters established by our Rules of Practice and Procedure. This participation by the Commission's legal staff in the administrative process is vital to insuring that our decisions will be based on all available, pertinent evidence, and the Commission deems such participation and development of the record to be unquestionably in the public interest. The Administrative Law Judge acted properly by overruling counsel-for-applicant's objection, and that ruling is hereby affirmed.

---

<sup>1/</sup> Omnibus holds no authority from any state or federal regulatory agency.

Second, counsel for applicant objected to certain questions predicated on the effectiveness of Order No. 1686. 2/ According to applicant's counsel, Omnibus was not required to cease and desist from conducting unauthorized operations, irrespective of the mandate in said order, until the statutory period for filing an application for reconsideration had run and, therefore, questions which presumed the finality of Order No. 1686 were impermissible. 3/ We reject this proposition as did the Administrative Law Judge who overruled the objection. All orders of the Commission, unless specifically stayed, are effective on the date of service thereof, and those persons to whom orders are addressed are expected strictly to comply with the directives thereof. While it is true that the filing of an application for reconsideration ordinarily acts as a stay upon the execution of a Commission order, the existence of the right to file, without actual filing, does not vitiate the finality or effectiveness of a Commission order. 4/

Turning now to the evidence adduced at the hearing, it appears that Omnibus is engaged generally in the transportation of passengers in school bus vehicles. It maintains facilities in Arlington, Va., for storage and maintenance of its vehicles. Applicant employs several mechanics and has an adequate maintenance and safety program. Omnibus assertedly maintains liability insurance meeting or exceeding the Commission's requirements, although, on the advice of counsel, Omnibus refused to disclose the exact extent of its insurance coverage.

Applicant's fleet includes 30 school buses all of which are equipped with public address systems. Approximately 10 buses are air-conditioned, and the majority have a seating capacity for 44 adults. None of the buses bear any identification of ownership because, according to applicant, such

---

2/ Order No. 1686, dated May 13, 1977, directed applicant to cease and desist from operating the services which are the subject of this application. Said services had theretofore been operated without authority. On May 16, 1977, applicant, by counsel, moved the Commission to stay the effective date of Order No. 1686 until the Commission had disposed of this application. This Motion was denied by Order No. 1699, served May 23, 1977, four days before the hearing on this application. On June 13, 1977, an application for reconsideration of Order No. 1686 was filed. Said application is pending before the Commission.

3/ Apparently, counsel for applicant also relied upon this erroneous interpretation of law in reaching a decision not to advise the applicant to discontinue the operations ordered ceased by Order No. 1686. (Transcript p. 98, lines 19-22) It is difficult to reconcile this asserted view of the law by applicant's counsel with his signing of the pleading of May 16 asking that the effective date of Order No. 1686 be stayed.

4/ See Compact, Title II, Article XII, Section 16, and Rule 28-05 of the Commission's Rules of Procedure.

identification is not permitted under the laws of Virginia. The Commission has since been advised, however, by the Assistant Supervisor of Pupil Transportation for the Commonwealth of Virginia that there is no such prohibition.

Omnibus presented evidence of its financial condition as of the close of its fiscal year ending August 31, 1976. At that time applicant's balance sheet reflected a net worth of \$61,630, and its statement of income showed an excess of receipts over expenditures of \$63,499, before adjusting for operating loss carry-over and income taxes. Applicant's president testified that Omnibus is now in even better financial condition, but had no more recent figures than those referenced above.

Omnibus presented evidence concerning its operations for each of the contracting parties. Inasmuch as witnesses appeared on behalf of three of these parties, however, only such testimony of applicant as refers to operations for Customs and Bretton Woods need be referenced in this order. For the same reason, details of the supporting affidavits on behalf of 4-H, the Comptroller, and WSS will not be reproduced herein, inasmuch as the testimony of the witnesses representing these parties is the best evidence of their service requirements.

Service for Customs requires an initial pickup each weekday at approximately 7:30 a.m. for transportation from the Quality Inn Central at Arlington, Va., to Customs Service Academy at 3520 Prospect Street, Washington, D. C. Return service leaves the Academy at 4:30 p.m. Customs requires from one to seven buses, depending on the number of employees participating in each weekly training program. Applicant's contract with Customs extends through October, 1977, and applicant is now providing service pursuant to said contract.

Service for Bretton Woods involves one bus each day, Monday through Friday, excluding holidays. Children whose parents are employed at the World Bank are transported from 700 - 19th Street, N. W., to the recreation center at Seneca, Md. The bus departs for Seneca at approximately 9 a.m. and departs on the return trip at approximately 4:30 p.m. This service is required only during the summer months.

As indicated above, applicant has provided such service in the past. It asserts that it was not aware of this Commission, but believed that the Washington Metropolitan Area Transit Authority (Metro) was the appropriate regulatory agency. Omnibus, at some time in the past, was allegedly told by someone at Metro that it was legal for Omnibus to contract for service with a local university. From this conversation, applicant apparently assumed that operations conducted pursuant to a contract did not require authority. Omnibus is aware of the Interstate Commerce Commission (ICC), but never sought the opinion of that agency and never applied to ICC for authority. Applicant also engages in the transportation of children to and from schools in Maryland and Virginia and performs certain charter operations for such schools. In so doing, it uses the same vehicles which are used in the operations under consideration herein.

The service required by the Comptroller is the transportation of Treasury Department employees from the Guest Quarters, Alexandria, Va., to L'Enfant Plaza, Washington, D. C., each weekday morning and return each afternoon. One bus is required to depart the Guest Quarters at 7:45 a.m. and to depart L'Enfant Plaza at 4:45 p.m., pursuant to applicant's written contract with the Comptroller. Applicant's service to date is said to be satisfactory, and, if it were not available, the Comptroller would be inconvenienced by having to search for other transportation. Omnibus has been providing the service continually for approximately 18 months and has continued to provide service after May 13, 1977.

The 4-H sponsors summer programs involving educational field trips to points in the Metropolitan District. Each program lasts one week and follows a predetermined itinerary. On Sundays, applicant would be required to transport approximately one busload of passengers and their baggage from Washington National and Dulles International Airports to the 4-H Center in Chevy Chase, Md. Return service to the airports would be effected on the following Saturday. In addition, many other program participants arrive at 4-H on Sunday by interstate motor coach. These interstate coaches are typically chartered to provide the local service described hereinbelow, as well as the long-haul service. The witness from 4-H testified, however, that on Sunday the interstate drivers have often driven the maximum number of hours allowed by law. Accordingly, 4-H may need as many as five buses on a Sunday evening for a two-hour night tour of Washington, D. C. On Monday through Friday of each week, service is needed one-way (a) from 4-H to the District of Columbia, and (b) from the District of Columbia to 4-H, and round-trip, beginning and ending at 4-H and extending to the Agricultural Research Center, Beltsville, Md., Arlington National Cemetery and Mt. Vernon, Va., and various points in the District of Columbia.

The 4-H has used applicant's service in the past and found it satisfactory. Omnibus has not been utilized, however, since the above-referenced Order No. 1686 was entered. On two or three occasions, four years ago, 4-H used the service of McMichael School Bus Service, Inc. (McMichael), protestant, on short notice, and was dissatisfied. 3/ Cooperation between the carrier and 4-H is said to be very important to the success of 4-H's programs. The 4-H does not now have a contract with Omnibus, but is willing to enter into a contract should this application be granted.

WSS provides housing for between 20 and 40 students at Fairfax Heritage Apartments and requires weekday transportation for these students to and from the facilities of WSS, departing at approximately 7:50 a.m. and returning at approximately 3:30 p.m. One bus a day is required, and applicant has been providing such service for about four years, including the two-week period

---

3/ Apparently, McMichael was subcontracted to provide service in connection with work scheduled to be done by D. C. Transit System, Inc.

between the date on which Order No. 1686 was entered and the date of this hearing. Omnibus originally entered into a contract with Clasco, Inc., formerly the parent company of WSS. Subsequently, WSS was sold to Airco, Inc., and that company has continued to pay Omnibus for the provision of transportation service. Accordingly, it appears that a novation has taken place with Airco, Inc., being substituted for Clasco, Inc., as the contract debtor as defined in Wheeler v. Wardell, 173 Va. 168, 3 S.E.2d 377, 380.

As indicated above, no witnesses appeared on behalf of Customs or Bretton Woods. Generally, affidavits submitted on behalf of these concerns indicate their satisfaction with applicant's service to date and their desire for its continuation. The affidavit submitted on behalf of Customs does not indicate any need for service to or from the Customs facility at 14th Street and Constitution Avenue, N. W., Washington, D. C.

Protestant McMichael, as pertinent, is authorized to transport passengers, in charter operations, from points in the District of Columbia and Prince George's and Montgomery Counties, Md., to points in the Metropolitan District. It operates 20 school buses and is experienced in the transportation of children. McMichael asserts that it is willing and able to provide service for Bretton Woods and 4-H (except, of course, that McMichael may not originate charters at Washington National or Dulles International Airports). McMichael's authority would not embrace service for Customs, the Comptroller, or WSS.

Webb Tours, Inc., also entered an appearance in opposition to the application, but did not present any evidence.

The Compact, Title II, Article XII, Section 4(d)(3) authorizes the Commission to grant temporary authority where there is an immediate and urgent need for service and no carrier service capable of meeting such need. The Commission finds that, with respect to service for Customs, the Comptroller, WSS, and that part of the 4-H operation involving pickups at Dulles International and Washington National Airports, applicant has sustained this burden of proof. With respect to the Bretton Woods operation and the balance (except service from Washington National and Dulles International Airports) of the service proposed for 4-H, protestant McMichael has established that it holds appropriate authority and is willing and able to provide the required service. Accordingly, the Commission finds that, to this extent, applicant has failed to meet the second concurrent criterion and that the application should be denied.

The Commission further notes that the evidence of record raises serious questions about applicant's fitness, willingness and ability to conform to the provisions of the Compact and the rules, regulations and orders of the Commission. The Commission has always considered the issue of fitness in temporary authority applications as to safety, compliance with the law, capacity to provide service and any other aspect of fitness deemed material

in a particular proceeding. However, unlike proceedings in which a certificate of public convenience and necessity is sought fitness is not a separate statutory criterion, and evidence of unfitness is weighed in light of the urgency of the expressed public need. Here, because the record clearly reflects that several innocent parties would be left without transportation service should this application be denied, the Commission shall defer further consideration of this issue until such time as the corresponding permanent Application No. 996 is submitted for disposition. The granting of temporary authority, however, gives no rise to any presumption regarding an applicant's fitness, and, of course, raises no presumption that permanent authority will be granted.

For the foregoing reasons, Application No. 999 will be granted in part and denied in part. The effectiveness of the grant of temporary authority, however, will be conditioned upon the prompt filing by applicant of an appropriate certificate of insurance, as required by Regulation 62. Applicant's proposed tariff (as supplemented by the contracts and confidential rate statement filed in response to Order No. 1694, served May 13, 1977), is hereby accepted for filing to be effective upon compliance with the conditions set forth herein.

One further matter requires discussion. Omnibus has been transporting schoolchildren in the same vehicles used for performing service subject to the certification requirements of the Compact. Title II, Article XII, Section 1(a)(3) of the Compact provides that

This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except transportation by motor vehicles employed solely in transporting school children and teachers to or from public or private schools;

In Order No. 521, served September 2, 1965, D. C. Transit System, Inc. v. WMA Transit Company, the Commission determined that a motor vehicle used in both certificated operations and school operations is subject to the certification requirements of the Compact. The exception otherwise conferred by the above-quoted provision is lost when the subject vehicle is not used solely for the transportation of schoolchildren and teachers to or from a school. This conclusion was subsequently reaffirmed in Order No. 1593, served August 13, 1976.

Thus, Omnibus must be required at present to segregate its fleet and designate which vehicles will be used for the operations authorized herein. The motor vehicles to be used in conducting authorized operations may not be used in excepted school transportation, and the vehicles used for excepted school transportation may not be used in operations subject to the certification requirements of the Compact. Omnibus shall be required to file with

the Commission a list of its vehicles clearly showing the year and make of each vehicle, its serial number, tag number and fleet number and stating with respect to each vehicle whether it will be used for excepted or authorized service. In addition, with respect to those vehicles to be used in performing authorized service, Omnibus shall comply with the provisions of Commission Regulations 68-03 and 68-04 which state:

68-03. There shall be displayed on the front of each vehicle operated pursuant to temporary authority the name, or trade name, of the carrier under whose authority the vehicle is being operated, and the date the temporary authority expires. The temporary authority notation shall be in the following form: "WMATC TA expires . . .". Nothing herein shall prohibit display of such additional identification as is not inconsistent herewith.

68-04. The display of name and number prescribed in this part shall be in letters and figures in sharp color contrast to the background and be of such size, shape and color as to be readily legible, during daylight hours, from a distance of 50 feet while the vehicle is not in motion, and such display shall be kept and maintained in such manner as to remain so legible. If desired, display may be accomplished through use of a removable device so prepared as otherwise to meet the identification and legibility requirements of the regulations in this part.

THEREFORE, IT IS ORDERED:

1. That Omnibus Corporation be, and it is hereby, granted temporary authority to transport passengers and their baggage in the same vehicles with passengers, over irregular routes, in charter operations pursuant to contract as follows:

A. From Washington National Airport, Gravelly Point, Va., and Dulles International Airport, Chantilly, Va., to the National 4-H Club Center, 7100 Connecticut Avenue, Chevy Chase, Md., restricted to transportation performed pursuant to a continuing contract or contracts with the National 4-H Club Center.

B. From Fairfax Heritage Apartments, 4415 Briarwood Road, Annandale, Va., to Washington School for Secretaries, 2020 K Street, N. W., Washington, D. C., and return, restricted to transportation performed pursuant to a continuing contract or contracts with Airco, Inc., and further restricted to the transportation of students of the Washington School for Secretaries.

C. From Quality Inn Central, 1190 Court House Road, Arlington, Va., to the facilities of U. S. Customs Service, 3520 Prospect Street, N. W.,



Washington, D. C., and return, restricted to the transportation of employees of U. S. Customs Service and further restricted to transportation performed pursuant to a continuing contract or contracts with U. S. Customs Service.

D. From the Guest Quarters, 100 South Reynolds Street, Alexandria, Va., to L'Enfant Plaza, S. W., Washington, D. C., and return, restricted to the transportation of employees of the Treasury Department and further restricted to transportation performed pursuant to a continuing contract or contracts with the U. S. Comptroller of the Currency.

RESTRICTION: The temporary authority set forth in A through D above is restricted to transportation in school bus type vehicles only.

2. That written notice must be filed by the carrier with the Commission within five days of any cancellation or termination of any of the aforementioned agreements, and further provided that any change in or amendment to any of the aforementioned agreements shall be filed with the Commission for approval at least 15 days prior to the proposed effective date of such change or amendment, and further provided that any change or amendment to any of the aforementioned agreements which would involve new authority shall be subject to the provisions of the Washington Metropolitan Area Transit Regulation Compact and the Rules and Regulations of the Commission.

3. That Application No. 999 of Omnibus Corporation, except to the extent granted above, be, and it is hereby, denied.

4. That Omnibus Corporation be, and it is hereby, directed to file with the Commission within five days from the date of service hereof (a) a certificate of insurance, (b) the segregated equipment list, as hereinbefore required, and (c) a statement of compliance with Commission Regulation 68.

5. That upon compliance with the requirements of the last preceding paragraph, the temporary authority granted herein shall become effective on the sixth day following the date of service hereof, June 29, 1977, and shall continue in effect until October 31, 1977, unless otherwise ordered by the Commission.

6. That unless compliance is made by Omnibus Corporation with the requirements set forth in the second preceding paragraph within five days from the date of service hereof, the grant of temporary authority made herein shall be considered as null and void and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

BY DIRECTION OF THE COMMISSION:



GREGORY P. BARTH  
Acting Executive Director